IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4453 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHIRENKUMAR CHAMPAKLAL SHAH DIRCTOR DADARWALA PAPERS LTD.
Versus
GUJARAT STATE FINANCIAL CORPORATION

Appearance:
1. Special Civil Application No. 4453 of 2001
MR AJ SHASTRI for Petitioner No. 1
MR MITUL K SHELAT for Respondent No. 1 & 2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 11/10/2001

C.A.V. JUDGEMENT

The petitioner - Dhirenkumar C. Shah has filed this petition against the Gujarat State Financial Corporation-respondent No. 1 and Regional Manager, Gujarat State Financial Corporation-respondent No. 2

praying for a direction or order quashing and setting aside the communication dated 11.6.2000 and to restrain the respondents from taking any steps pursuant to the impugned communication and further to consider the request of the petitioner made in the letter dated 19.6.2001.

2. The facts giving rise to this petition are as under:

2.1 The petitioner Company was incorporated in the year 1991-92 for manufacturing various classes of papers. The petitioner was allotted a plot No. 161 at GIDC, Vapi.

2.2 The respondent provided Rs. 124 lakhs in two phases, one in 1994 and another in 1995 and the petitioner started production. The respondent granted loan of Rs. 1 crore which was disbursed phase-wise and last disbursement was on 20.10.2000. Normal moratorium period for the term loan is two years in view of the policy. The respondent also gave certain concessions to rehabilitation finance project on 12.3.2001. Though the last disbursement was in October, 2000 the respondents fixed instalments spread over to period charged at 10% with effect from 1.5.2000 in an arbitrary way.

2.3 The petitioner made a request to the respondents about the difficulty on 17.4.2001 which was considered but instead of May from November the requested is considered without considering the consistent policy of granting moratorium period and interest rate is also changed vide letter dated 23.4.2001. The petitioner also pointed out that there are about 50 workers working and more than Rs. 70,000/- has been paid and units have shown good sale figures. On 17.6.2001 the respondent directed the petitioner to pay Rs. 71,10,187/-. Thereafter, the respondent issued show cause notice on 11.6.2001 and initiated recovery proceedings and on 18.6.2001 a notice is served indicating that steps will be taken under Section 29 of the Act. The petitioner filed reply on 19.6.2001. However, the respondent decided to proceed with recovery with effect from May 2000 and indicated that order is issued to take possession of the Unit.

2.4 Being aggrieved and dissatisfied with the aforesaid action of the respondents, the petitioner has filed the present petition on 21.6.2001. When the matter was placed for hearing on 22.6.2001 this court has directed the respondents not to take any coercive steps

for recovery pursuant to Section 29 of the Act and and not to take possession of the petitioner's unit. This court also directed the petitioner to pay Rs. 5 lakhs on 6.7.2001.

3. When the matter was placed for hearing Mr. A.J. Shastri appeared on behalf of the petitioner and Mr. Mr. Mitul K. Shelat appeared on behalf of the respondents. He stated that as the petitioner has failed and neglected to make payment, the respondentCorporation was perfectly justified in initiating steps under Section 29 of the Act. However, before I adjudicate the matter, both the petitioner and the respondent Corporation have decided to settle the matter and produce a consent before me. In view of the consent terms this matter can be disposed of accordingly.

3.1 Mr. Shastri, learned counsel for the petitioner has produced an affidavit on behalf of the petitioner filed by Dhirenkumar Shah, Director of Dhdrawala Papers Ltd. dated 28.8.2001. He has also produced an undertaking signed by Dhirenkumar Shah, son of Champaklal Shah and also certified true copy of the Resolution passed at the meeting of the Directors of the Company held on 24.8.2001 by which the Board of Directors decided to file the affidavit and an undertaking in the matter of Special Civil Application No. 4453 of 2001 pending before this court. The Resolution further authorised Mr. Dhirenkumar Shah to file affidavit and the undertaking in this behalf.

4. The contents of the affidavit are reproduced hereunder:

4.1 I am presently the director of Dadrawala Papers Ltd. and am authorised by the Company vide its resolution of the board of directors held on 24th day of August, 2001 to file this affidavit and undertaking in support of the affidavit before this Hon'ble Court. Annexure `A' is a copy of the said resolution.

4.2 I submit that Dadrawala Papers Ltd. (hereinafter referred to as the Company) has defaulted in the payment of instalments amounting to Rs. 71,10,187/- (Rupees seventy one lakh ten thousand one hundred and eighty seven) as on 1.5.2001 due to the Gujarat State Financial Corporation (hereinafter referred to as the Corporation)

4.3 I submit that the Company accepts its liability

to pay the instalments of the Corporation as and when they become due and payable.

4.4 I submit that the company has deposited an amount of Rs. 5,00,000/- (Five lakhs) with the Corporation pursuant to the order of this Hon'ble Court, passed on 22.6.2001. I submit that the company undertakes to pay the balance amount of Rs. 66,10,187/- in the manner as stated hereunder:

4.4(A) Rs. 10,00,000/- (Ten lakh) shall be paid by the company to the Corporation on or before 15.9.2001.

4.4(B) Rs. 25,00,000/- (Twenty five lakh) shall be repaid by the company to the Corporation on or before 30.10.2001.

4.4(C) Rs. 25,00,000/- (Twenty five lakh) shall be repaid by the company by depositing the amount of subsidy, expected to be received by it from the State Government. In any event the said amount shall be repaid by the Company on or before 15.11.2001.

4.4(D) Rs. 06,10,187/- (Six lakh ten thousand one hundred and eighty seven) shall be repaid by the company to the Corporation on or before 10.12.2001.

4.5. I undertake on my own behalf and so also on behalf of the company to make the payment in the manner stated hereinabove and assure the Hon'ble Court that there shall be no default in making the payments as aforesaid. A separte undertaking to this effect is marked Annexure-I to this affidavit.

4.6. In view of and subject to what is stated hereinabove, I most respectfully submit that the Hon'ble Court be pleased to restrain the Corporation from enforcing and implementing its notice dated 11.6.2001.

5. The undertaking given by the petitioner is reproduced as under:-

5.1 I, Dhirenkumar Shah, son of Champaklal Shah aged 39 years residing at Vapi, Director of Dadrawala Papers Ltd. do hereby undertake on behalf of Dadrawala Papers

Ltd. and also on my own behalf as under:

5.2. The company shall make thel payment of the amount outstanding pursuant to the notice dated 11.6.2001 as under:

5.2(A) Rs. 10,00,000/- (Ten lakh) shall be paid by the Company to the Corporation on or before 15.9.2001.

5.2(B) Rs. 25,00,000/- (Twenty five lakh) shall be repaid by the Company to the Corporation on or before 30.10.2001.

5.2(C) Rs. 25,00,000/- (Twenty five lakh) shall be repaid by the Company by depositing the amount of subsidy expected to be received by it from the State Government. In any event the said amount shall be repaid by the company on or before 15.11.2001.

5.2(D) Rs. 6,10,187/- (Six lakh ten thousand one hundred and eighty seven) shall be repaid by the company to the Corporation on or before 10.12.2001.

6. In view of the aforesaid compromise entered into and the undertaking filed, I do not decide the matter on merits but if the following directions are given, the same is in the interest of parties.

In view of the same, if the petitioner satisfies the respondent Corporation with the terms and conditions of the affidavit as well as the undertaking given the petitioner then Mr. Shelat on instructions from Mr. M.R. Shah, Manager (Legal) of the respondent Corporation states that the Corporation will not enforce notice dated 11.6.2001 issued under Section 29 of the Act.

7 In view of the above, the matter is disposed of accordingly. Interim relief is vacated.

(K.M. MEHTA, J)

(pkn)